
The Office of State Examiner The Louisiana Municipal Fire and Police Civil Service



The Examiner

News for Municipal Fire & Police Civil Service Board Members,
Appointing Authorities, Department Administrators, and
Classified Employees

In This Issue:

- A Message from Melinda B. Livingston, State Examiner
- Seminar Information
- 2001 Legislation Affecting the Classified Service
- Attorney General Opinions of Special Interest
- Board of Ethics Opinions of Special Interest
- Frequently Asked Questions and Responses
- Website Updates



Message from Melinda B. Livingston, State Examiner

Dear Friends:

We recently completed our five-year strategic plan in accordance with state law, and it was an excellent opportunity for us to look at what we have accomplished over the last few years and to focus on new opportunities and challenges facing the Office of State Examiner. We are anticipating an explosive growth in the number of jurisdictions to which our system applies over the next few years, with our jurisdiction count moving from 96 to nearly 140 municipalities and fire protection districts. Nevertheless, we remain committed to providing individualized services that are personalized to your needs to facilitate the operation of the system at the local level.

On that note, it never ceases to amaze me when callers to our office express surprise that they can simply call and talk to me on the phone. Being available to answer questions when you need us is but one of the many services we provide to those associated with the Municipal Fire and Police Civil Service System. Many of you have taken advantage of our invitation to visit our office, meet our staff, and see first hand how we develop and grade tests. We truly care about the success of the career employees in our system, and will be happy to meet with any career employee to discuss our recommendations for guiding future study efforts on

promotional examinations. We also look forward, when invited, to speaking with you when you gather for conferences, conventions, and seminars.

If you have not used our website much in the last year, I encourage you to take advantage of the wealth of information which may be helpful to you. We are encouraged by the positive response many of you expressed about our 2001 Legislative Tracking Site, as well as the other features which we now have available online. We think you will be as excited as we are about new website features which we hope to introduce during the upcoming year.

It has been some time since we have been able to conduct a training seminar due to our limited personnel resources, but we are pleased to announce that we have redesigned our training program and materials, and will be conducting our first seminar of the year in Hammond on September 13, 2001. We are very appreciative to the City of Hammond for contacting us about becoming a host city for our seminar, and would particularly like to thank Attorney Douglas Brown for his interest and assistance in this project. You will find more information about the seminar later in this publication.

We have been advised by the Retirement Systems Building that our lease will not be renewed upon the expiration of our current lease on June 30, 2002, so it looks as though we will be moving prior to that time. One of our primary considerations in the selection of a new location is to remain easily accessible to those of you who need to visit our office.

We will notify you of our change of address as soon as it is available, and will do everything possible to minimize the impact of our move upon the services we provide to you.

Finally, and on a somewhat personal note, you may have wondered why we have seemed unusually shorthanded at times this year. With a staff of only seventeen employees, we welcomed three new babies (within a six week period) and even one granddaughter to our office "family" this year! We extend our heartfelt congratulations to the new parents on our staff, Wendy Reardon, Jill Childers, and Byron Sam, and to one very proud grandpa, Deputy State Examiner Bob Lawrence.

We look forward to working with you during the upcoming year, and welcome your comments and suggestions. Please feel free to contact me directly at any time if I might be of any assistance to you.

Melinda B. Livingston
State Examiner

Seminar to be Held in Hammond

For those of you who may have attended one of our seminars in the past, we have listened to your comments about topics you would like for us to cover, and have substantially revised both our training materials and the format for this seminar. In the past, the seminar has focused on a discussion of the Municipal Fire and Police Civil Service Law. In listening to many of the calls we receive, however, there seems to be a need for tools to help administrators make the system work for them rather than against them, and to help civil service boards and jurisdiction administrators work together. We would never be so presumptuous as to tell you how to run your departments, but what we can do is discuss ideas that will help you be more successful in solving some of your personnel problems. To this end we plan to discuss job performance, discipline, and documentation. Should our best efforts not be successful in changing an employee's behavior and job performance, it is time to end the myth that public employees have their jobs for life. We hope to give administrators key tools that will serve as a roadmap for success should it become necessary to separate an employee from the service.

In addition to calls from chiefs and appointing authorities, we frequently receive calls from civil service boards concerning the same topics – what type of testimony do you need in order to determine if the appointing authority has acted in good faith for cause in taking disciplinary action against an employee?

We are pleased to announce that Ms. Kristen K. Morgan, an Attorney for the Louisiana Board of Ethics, will present a session on issues pertaining to our system that may fall under the Louisiana Code of Governmental Ethics: nepotism, prohibited transactions, gifts, illegal payments, participation, post employment activities, and so forth.

Other topics to be covered include a special procedural section for civil service boards to use as a template for conducting their business, a 2001 legislative update, and a brief look to the future. As the State of Louisiana moves toward the concept of e-Government more interactive opportunities will become available for civil service.

The first seminar will be held in Hammond at the Quality Inn located at 14175 Hwy. 190 on September 13, 2001, from 9:00 a.m. to 5:00 p.m. Lunch will be on your own, and our hosts in Hammond will provide a list of nearby restaurants you may wish to try. Seating for this seminar will be limited and on a first-come first-serve basis. You must pre-register by September 6 in order to have the training manuals prepared and customized for your jurisdiction. We do anticipate conducting seminars in other locations throughout the state in the future, so feel free to contact us if you would like to serve as a host city. Also, please remember that there will be other opportunities available if this date and location do not meet your needs.

2001 Regular Session

of the

Louisiana State Legislature

For the first time, the Office of State Examiner posted information on its website in order to provide a means to track legislation of particular interest to persons

associated with the Municipal Fire and Police Civil Service System. During the 2001 Regular Session of the Louisiana Legislature, the agency tracked sixty-one House bills and thirty-nine Senate bills. While there were fewer changes to the Municipal Fire and Police Civil Service Law than in recent years, other laws were enacted which impact the employees of the classified service. An overview of legislation enacted by the 2001 Regular Session follows. To obtain the full text of an Act, or to review the legislative process for each bill, please visit our website at www.ose.state.la.us/. Click on **Legislative Session 2001**, then click on **House Bill** or **Senate Bill** to locate the legislation desired for viewing.

CIVIL SERVICE

Opelousas Civil Service Board

Board Members to Receive Compensation for Attendance at Meetings

Act No. 683 (SB 252 - Cravins) enacted R.S. 33:2476.2 which provides for compensation to members of the Opelousas Municipal Fire and Police Civil Service Board in the amount of \$25.00 for their attendance at meetings of the board, not to exceed two meetings per month. The employee-elected members of the fire and police departments are excluded from receiving such compensation. Act No. 683 became effective on June 25, 2001.

Sulphur Police

Calculation of Seniority Revised for Line Class Promotions

Act No. 980 (HB 844 - Johns) enacted R.S. 33:2491.2 to provide relative to promotional employment lists for the police service of the City of Sulphur. Prior to Act No. 980, classified employees of the Sulphur Police Department who moved from the support classes into the line classes had their total departmental seniority counted toward future promotions. With the enactment of Act No. 980, such employees shall no longer have prior service in support classes counted toward future promotions in the line classes until such time that their service in the line classes meets or exceeds five years. Act No. 980 became effective on August 15, 2001.

Hammond Police Chief

Position moved to the unclassified service



Act No. 5 (SB 325 - Hainkel) enacted R.S. 33:2481(B)(6) which provides that the Chief of Police for the City of Hammond shall be placed in the unclassified service. Act No. 5 is prospective and is not applicable to the current incumbent. Act 5 became effective on August 15, 2001.

Lake Charles Police Chief

Six-year Term May be Established

Act No. 709 (SB 624 - Mount) enacted R.S. 33:2481.2 to provide relative to the office of Police Chief of the City of Lake Charles. Act No. 709 provides that, subject to amendment to its home rule charter, the city of Lake Charles may establish a term of office of not less than six-years for the classified position of Police Chief. At the expiration of the term, the person appointed Police Chief shall be subject to removal or may be reappointed for a subsequent term. Act No. 709 became effective on June 25, 2001.

Shreveport Civil Service Board

Expiration of terms repealed

Act No. 505 (HB 263 - Glover) repealed Section 3 of Acts 1999, No. 1190 which provided that the terms of all members of the Shreveport Municipal Fire and Police Civil Service Board (R.S. 33:2476.1) shall have been expired on December 31, 2001. Act No. 505 became effective on August 15, 2001.

SUPPLEMENTAL PAY

Constitutional Amendment

Mandates Full Funding of Supplemental Pay

Act No. 1234 (HB 485 - Toomey) proposes to amend Article VII, Section 11(A) and to add Article VII, Section 10(D)(3) to require the payment by the state of salary supplements to full-time local law enforcement

and fire protection officers of the state. Beginning with the fiscal year which begins July 1, 2003, the legislature shall appropriate funds sufficient to fully fund the cost of such state supplement to the salaries of full-time law enforcement and fire protection officers. The proposed amendment shall be submitted to the electors of the state of Louisiana at the statewide election to be held on November 5, 2002. Act No. 1234 was filed with the Secretary of State on June 18, 2001.

FIRE AND POLICE RETIREMENT

Military Service

Military Service Dates Revised



Act No. 1176 (HB 1408 - Schneider), Section 1 amended and reenacted R.S. 11:2269(B)(1), relative to the Firefighters' Retirement System, to change the dates during which certain military service must have occurred in order to purchase credit for such service. Prior to Act No. 1176, R.S. 11:2269(B)(1) provided that applicable military service must have occurred from January 1, 1960 to December 21, 1975. Act No. 1170 amended the dates to read "beginning on January 1, 1960 and extending through December 31, 1975." Act No. 1176, Section 2 provides that R.S. 11:2269(B)(1) shall be applied retroactively to July 15, 1999. Section 1 of Act No. 1176 became effective July 1, 2001.

Purchase of Military Service Credit

Act No. 419 (HB 772 - Downer) amended and reenacted R.S. 11:153 to put the purchase of credit for all non-regular military service on the point system, and allow for the duplicate use of certain pre-employment reserve service in accordance with federal law and all on an actuarial basis. Act No. 419 became effective June 15, 2001.

Act No. 1035 (SB 1041 - Schedler) enacted R.S. 11:153(H) authorizing members of the Municipal Police Employees' Retirement System with a vested military benefit to purchase credit for that military

service. Act No. 1035 became effective August 15, 2001.

Deferred Retirement Option Plan

Optional Benefit Added to DROP (Fire Service)

Act No. 1028 (SB 821 - Hoyt) amended and reenacted R.S. 11:2257(H) creating an optional benefit in the Deferred Retirement Option Plan (DROP). The Act adds language to R.S. 11:257 which allows members of the Firefighters' Retirement System, upon termination of employment, whether at the end of the specified period of participation or after a period of reemployment, may, at his option, continue to have his



retirement benefits deposited to his DROP account. The member must specify the periods for which the deposits shall be made, and once deposits have been terminated no further deposit of benefit payments shall be permitted. Should a member become reemployed, deposits shall be terminated and no further deposit of benefit payments shall be permitted. Act No. 1028 became effective August 15, 2001.

The State Examiner's Office advises that the provisions of Act No. 1028 must be considered in light of the provisions of the Municipal Fire and Police Civil Service Law regarding reemployment of classified personnel. Louisiana R.S. 33:2490(D) and 33:2550(D) provide that any regular employee who resigns from a position in the classified service may, with prior approval of the civil service board, be reemployed in a position of the class, or in a position of any lower class for which he is qualified, provided the reemployment is made within four years of the date of resignation, and provided that no person whose name appears upon applicable eligibility lists is otherwise willing to accept the appointment. The person seeking to be reemployed must also provide a favorable medical certificate following a recent examination by a practicing physician.

FYI -- Civil service boards are requested to promptly send the unapproved minutes of board meetings to the State Examiner's Office. This practice helps our office to advise and assist your board as may be necessary in a timely manner.

Disability Retirement Benefits
for
Members and DROP Participants
(Fire Service)

Act No. 733 (SB 833 - Hoyt) amended and reenacted R.S. 11:2258(B)(1) to provide that a retired member or a Deferred Retirement Option Plan (DROP) participant who becomes disabled for any reason provided by law shall be permitted to apply for conversion of a service retirement to a service connected disability retirement. Such conversion requires the applicant to demonstrate clear and convincing evidence that the conditions causing the disability occurred during active employment as a Firefighter (Effective August 15, 2001). The authority of a retired member or DROP participant to convert from service retirement to a service connected disability retirement shall cease on July 31, 2006 (Effective January 1, 2002).

Firemen's Pension and Relief Fund - Bossier City

Act No. 411 (HB 511 - Montgomery) amended and reenacted R.S. 11:3200(12)(f) deleting the general prohibition against the payment of interest on the Deferred Retirement Option Plan account. It also deletes the required one-year waiting period before interest is paid. Act No. 411 became effective June 15, 2001.

Additional Eligibility Age for DROP
(Police Service)



Act No. 1161 (HB 510 - Montgomery) amended and reenacted R.S. 11:2221(A) relative to the Municipal Police Employees' Retirement System. Act No. 1161 provides that any member of the system who has at least twelve years of creditable service and has attained at least age fifty-five may elect to participate in the Deferred Retirement Option Plan (DROP). Act No. 1161 became effective June 29, 2001.

Retirement Board Approval Repealed

Act No. 436 repealed R.S. 11:232 which required the approval of retirement benefits by the boards of trustees. Act No. 436 became effective July 1, 2001.

OCCUPATIONAL DISEASES

Hepatitis B and C

Act No. 443 (SB 725 - Hines) enacted R.S. 33:2012 to provide that Hepatitis B and Hepatitis C are classified as occupational diseases or infirmities connected with the duties of a Firefighter or Police Officer. Act No. 443 became effective August 15, 2001.



FIRE SERVICE - MISCELLANEOUS

Fire Protection

Fire Ground Authority

Act No. 1108 (HB 1890 - Kennard) amended and reenacted R.S. 33:1971 which provides relative to fire ground authority over all fire safety personnel and other persons at emergency scenes. The Act adds language to R.S. 33:1971 to provide that when a situation develops which requires the services of and response by members of any fire department, that sole authority, command, and control of all fire safety personnel and of all persons within the perimeters of the zone of danger shall fall to the ranking fire protection or fire prevention officer from that jurisdiction. It also adds that, in the event that the situation is a forest fire, grass fire, or other wildland fire that would come under the jurisdiction of the Louisiana Department of Agriculture and Forestry, Office of Forestry, then the ranking forestry officer on the scene shall establish a unified command of equal authority with the ranking fire department officer on the scene to abate the incident. Act No. 1108 became effective August 15, 2001.

FYI - In accordance with civil service law, each civil service board is required to conduct at least one (1) meeting during each quarter of each calendar year.

Minimum Monthly Salaries

Act No. 950 (HB 1982 - Glover) enacted R.S. 33:1992(D) which provides that R.S. 33:1992(A)(9) shall be applicable to any incorporated city with a population of not less than 200,000 and not more than 225,000 persons (currently Shreveport). R.S. 33:1992(A)(9) provides that a Fire Alarm Operator or Dispatcher, or any other person doing this type of work for the fire department, shall receive a minimum monthly salary of not less than twenty-five percent above that of a fireman. Act No. 950 became effective June 26, 2001.

Fire and Emergency Training Services Districts

Act No. 188 (HB 1789 - Doerge) enacted Part II-B of Chapter 7 of Title 40 of the Louisiana Revised Statutes of 1950 which provides for the creation of fire and emergency training services districts as political subdivisions of the state. The purpose of such districts is to maintain and operate facilities for the training of fire fighting and emergency services personnel. Act No. 188 became effective May 31, 2001.

Fire and Emergency Training Services Districts

Act No. 189 (HB 1818 - Doerge) amended and reenacted R.S. 22:1585(A) and (F) and R.S. 40:1593 to provide for the distribution of the proceeds from the 2% tax on fire insurance premiums, including the purchase of group insurance for volunteer Firefighters, the development and operation of the Pine Country Education Center, and for support of the firefighter training program for the Fire and Emergency Training Institute at Louisiana State University. Act No. 189 became effective May 31, 2001.

Intent to Kill or Injure Firefighter, Peace Officer

Act No. 1056 (HB 945 - Martiny) amended and reenacted R.S. 14:30(A)(2) relative to first degree murder. Act No. 1056 provides that first degree murder is the killing of a human being with the specific intent

to kill or inflict great bodily harm when the intent is directly related to the victim's status as fireman, peace officer, or civilian employee of a forensic laboratory engaged in the performance of his lawful duties. Act No. 1056 became effective August 15, 2001.

Injuring or Killing of Dogs Used in the Fire Service

Act No. 213 (HB 124 - Bruce) amends and reenacts R.S. 14:102.8(B), and enacts R.S. 14:102.8(E). Act No. 213 makes the crime of injuring or killing dogs used by law enforcement agencies applicable to dogs used by any public safety agency which are trained to perform search and rescue. Act No. 213 became effective August 15, 2001.

Firefighter Certification

For Completion of IFSAC Courses



Act No. 212 (HB 122 - Townsend) amended and reenacted R.S. 40:1543, 1544, and 1546 to provide for reciprocity certification by Louisiana State University when International Fire Service Accreditation Congress (IFSAC) accreditation standards are met. Act No. 212 became effective August 15, 2001.

Fire Protection Districts

Board of Commissioners - Per Diem

Act No. 708 (SB 621 - Hainkel) enacted R.S. 40:1498(F) which provides that all members of the governing board of any fire protection district located wholly within a parish having a population of not less than 191,000 nor more than 225,000 persons may be paid a per diem of \$100 for attending meetings of the board, not to exceed two meetings in any one calendar month, and \$50 for attending committee meetings, not to exceed two meetings in any one calendar month. Act No. 708 became effective August 15, 2001.

Act No. 110 (SB 930 - Cravins) amended and reenacted R.S. 40:1498(E) which provides for the per diem compensation (eighty dollars for attending meetings not to exceed two meetings per calendar month) for all members of the governing board of any fire protection district located wholly within a certain parish. The Act increased the applicable population figures for the parish to less than eighty-eight thousand but more than eighty thousand persons (currently St. Landry Parish). Act No. 110 became effective May 24, 2001.


Board of Commissioners - Membership

Act No. 722 (SB 733 - B. Jones) amended and reenacted R.S. 40:1509 which provides for membership on the board of commissioners of a fire protection district in certain parishes to be comprised of at least one member from each ward located within the boundaries of the district. The Act increased the applicable population for such parishes to not less than forty thousand and not more than forty-three thousand, five hundred persons (currently Avoyelles, Lincoln, St. John the Baptist, and Webster Parishes). Act 722 became effective June 25, 2001.

POLICE SERVICE - MISCELLANEOUS

Investigations

Law Enforcement Personnel

 Act No. 933 (HB 1847 - Holden) enacted R.S. 40:2531(B)(7) which provides that each investigation conducted by a police department of a law enforcement officer, not including any investigation of alleged criminal activity, shall be completed within sixty days. In municipalities subject to the Municipal Fire and Police Civil Service Law, the police department may petition the local municipal fire and police civil service board for an extension up to an additional sixty day period. The board is required to set a hearing in order to determine if there is cause for granting such an extension. At the hearing, the officer under investigation has the right to present evidence and arguments against the extension. The Act provides that the law enforcement officer under investigation and the appointing authority are not prohibited from

entering into a written agreement extending the investigation for up to an additional sixty days. It is our appreciation of the language of the Act that the police department is not obligated to petition the local board for an extension, but may do so. Act No. 933 became effective August 15, 2001.

Kenner Police

Establishment of Work Periods for Police Department Employees

Act No. 793 (HB 118 - Powell) enacted R.S. 33:2213(O) which provides that the City of Kenner may establish a work period not to exceed fourteen days for police department employees provided they are compensated at the rate of one and one-half times their regular rate of pay, or credited with compensatory time on a one and one-half time basis, for all hours in the work period that exceed an average of forty hours per week. Act No. 793 became effective June 26, 2001.

Appearance Bond Fee

Municipal Police Chiefs

Act No. 674 (SB 100 - C.D. Jones) amended and reenacted R.S. 33:2334(A) and (B) and increases the appearance bond taken by municipal police chiefs from eight dollars to fifteen dollars. The fee shall be payable to the municipality's general fund, and the amount of the fee appropriated, subject to applicable law, by the municipality to the chief of police to be used for law enforcement purposes is increased from six dollars to thirteen dollars. Act No. 674 became effective June 25, 2001.

PUBLIC MEETINGS

Public Comment

Act No. 285 (HB 15 - Bruneau) enacted R.S. 42:5 which provides that each public body conducting a meeting which is subject to the notice requirements of R.S. 42:7(A) shall provide an opportunity for public comment at such meeting, subject to reasonable rules, regulations, and restrictions as adopted by the public body. Act No. 285 became effective August 15, 2001.

It is our appreciation that this legislation applies to meetings of the Municipal Fire and Police Civil Service Boards.

Legislation that Failed to Pass

HB 476 - Proposed to amend Article X, Section 20 of the Constitution of the State of Louisiana to authorize an employee of the classified fire and police civil service in certain municipalities, parishes, and fire protection districts to make political speeches or public political statements on behalf of an association or labor union of which he is a member. (Also SB 141.)

HB 699 - Proposed to authorize employees in the classified service in certain municipalities, parishes, and fire protection districts to make political speeches or public political statements on behalf of an association or labor union of which he is a member.

HB 1068 - Proposed that names of persons attaining passing scores on promotional tests shall be ranked on the eligibility list, from highest to lowest, according to final test scores. HB 1068 proposed that the appointing authority shall select and appoint any one of the five persons (three in the smaller municipalities and fire protection districts) having the highest scores.

HB 1239 - Proposed to protect the positions, salaries, and benefits of classified fire service employees upon the merger or consolidation of certain fire protection districts or fire departments.

HB 1404 and SB 799 - Proposed that eligibility and appointment to positions in promotional classes in the classified police service would be based on total seniority in the next lower class from which the appointment is to be made, rather than on total departmental seniority.

HB 1257, HB 1283, and SB 820 - Proposed creation of the Back Deferred Retirement Option plan.

HB 1862 - Proposed that each member of the police department who has three years continuous service shall receive an increase in salary of 2% and shall thereafter receive an increase of two percent for each year of additional service up to and including 20 years. Proposed also that both the base pay and accrued

longevity pay shall be used in computing such longevity pay, and would be applicable to each municipality with a population between 12,000 and 250,000.

SB 942: Proposed to enact R.S. 33:2494.1 which would have provided for an elected office of Chief of Police in a certain municipality having a population between 210,000 and 250,000 persons (currently Baton Rouge).

Other bills filed, but which were withdrawn or failed to pass:

Firefighter Retirement: HB 876; HB 1226; HB 1248; HB 1257; HB 1283; HB 1337; HB 1409; HB 1410; HB 1411; HB 1412; HB 1413; HB 1414; SB 403; SB 483; SB 486; SB 801; SB 817; SB 818; SB 819; SB 820; SB 824; SB 843; SB 844; SB 870; SB 871; SB 872

Municipal Police Retirement: HB 570; HB 1425; HB 1426; SB 838

Retirement - Statewide Systems: HB 877; HB 1346; HB 1375; HB 1552; SB 149; SB 403; SB 483; SB 486

Firefighter Training: HB 290; HB 340; HB 1576

Volunteer Firefighting: HB 289

HazMat Investigation: HB 1329

Law Enforcement: HB 51; HB 1814; SB 520

Insurance: HB 1101; HB 1149

Supplemental Pay: HB 514; SB 55; SB 618

Public Meetings: HB 206

Public Records: HB 308; HB 392

Public Contract/Bids : HB 1167

Fire Protection Districts: SB 756

Appointed Officials/Term Limits: HB 22

Parishes/Attorney: SB 473

Attorney General Opinions of Special Interest

No. 99-49A

July 5, 2001



Recalled Attorney General Opinions 99-41 and 98-267 which stated that part-time positions in fire departments must be classified if the duties assigned to such positions primarily involved fire suppression. These opinions failed to cite R.S. 33:2481(B)(4) and R.S. 33:2541(B)(4) which specifically excludes part-time positions from the classified service.

No. 00-58

April 13, 2000

Rule adopted by Kenner Municipal Fire and Police Civil Service Board currently disallows employment to individuals under 21 years of age, but rule may be changed upon petitioning the board (R.S. 33:2493(D) - board may adopt special qualification requirements). Federal law makes it unlawful to sell firearms other than a rifle or shotgun to anyone under 21 years of age. However, an exception is made in sales for use by any state or any department, agency, or political subdivision.

No. 00-254

July 10, 2000

There are no state laws that prohibit placing a local police department employee on administrative leave with pay while under investigation. The ordinances of the local governing authority and civil service rules would have to be considered.

No. 00-314

September 19, 2000

Public records must be produced upon request as provided in R.S. 44:1, et seq. However, information which is specifically exempted by law or information which would violate a person's constitutionally

guaranteed right to privacy, may be separated or deleted from the public record before disclosure.

No. 00-370

September 29, 2000

Reiterated earlier opinions which concluded that annual leave and sick leave provided for firemen in R.S. 33:1995 and R.S. 33:1996 only apply to municipalities with a population of thirteen thousand or more and firemen paid by a parish or fire protection district.

No. 01-04

January 19, 2001

State Law does not prohibit an eighteen-year-old individual from employment as a police officer. Federal law makes it unlawful to sell firearms other than a rifle or shotgun to anyone under 21 years of age. However, an exception is made in sales for use by any state or any department, agency, or political subdivision.

No. 01-27

April 23, 2001

This opinion answered questions regarding the issue of moving the classified position of Police Chief to the unclassified service, and provided clarification of earlier opinions. Of particular note, the opinion states that the classified position of Police Chief in a special charter form of government may be moved to the unclassified service by amending the city charter to provide that the position become either elective, or to allow that the position be contracted to a private firm. In either event, the Attorney General opined that the position would no longer fall under the classified service because the right of employee selection, appointment, supervision, and discharge would not be vested in the municipal government or with an officer or employee thereof. The opinion does not, however, seem to state that the appointed position of Police Chief may be moved from the classified service to the unclassified service where the right of employee selection, appointment, supervision, and discharge would remain vested with the municipal government or with an officer or employee thereof.

Louisiana Board of Ethics Opinions of Special Interest



Please note that the advisory opinions rendered by the Board of Ethics are based upon the particular facts presented. As such, the scope of each opinion is limited to the parties and the facts involved. However, the opinions may serve as a

general guide to other individuals similarly situated. You may always seek an advisory opinion specific to your situation by writing to the Board at: 8401 United Plaza Blvd., Suite 200, Baton Rouge, LA 70809-7017

No. 2001-028

An interim Fire Chief may be appointed by the mayor as the city fire chief while his father serves as a city council member. The interim Fire Chief began his service with the fire department over a year prior to his father becoming a council member, and his appointment would be a normal promotional advancement. However, his father may not participate in a motion to confirm his son's appointment as Fire Chief. §1119; §1112

No. 01-025

A city Police Sergeant who works for a car care center during his off-time may not install equipment on police vehicles even if the police department pays the car care center directly. Also, if the car care center has a contractual or business relationship with the police department to do work on its vehicles, the Police Sergeant is prohibited from working for the car care center. §1111C & §1113A

Nos. 01-169, 01-313

A parish firefighter may serve as a member of the board of directors of a village volunteer fire department while stationed at the volunteer fire department as long as he is not paid for serving as a board member. Section 1123(1) of the Code allows public servants to participate in the affairs of volunteer fire departments when no compensation is received. Similarly, a member of a parish fire protection district may serve as the temporary Fire Chief for the district as long as he does



not receive compensation for serving as Fire Chief. §1123(1)

Minimum Staffing and Response Time Standards Approved by NFPA

NFPA Standards 1710/1720



On July 10, 2001, the Standards Council of the National Fire Protection Association (NFPA) approved the 2001 editions of NFPA Standards 1710 and 1720 with an additional equivalency statement. These new standards establish minimum staffing and maximum response times for career and volunteer fire departments, respectively. Standard 1710, in most cases, requires that each apparatus leaving the station must be staffed with at least four firefighters, and requires a response time of four minutes or less 90% of the time. The council approved the following equivalency statement:

1.3 Equivalency. *Nothing in this standard is intended to prohibit the use of systems, methods, or approaches of equivalent or superior performance to those prescribed in this standard. Technical documentation shall be submitted to the authority having jurisdiction to demonstrate equivalency.*

The Technical Committees responsible for NFPA 1710/1720 have also been directed by the Council to enter these documents into the revision cycle reporting to the 2004 Annual Meeting.

Frequently Asked Questions

What is the difference between a substitute appointment and a provisional appointment?

Whenever an employee is on any type of approved leave of absence (for example, annual leave, sick leave, or military leave) that employee continues to occupy his position. If the appointing authority needs someone to temporarily perform the duties of the position in the

employee's absence, a *substitute* may be appointed. Civil service law provides that, for absences of fewer than thirty days, the appointing authority may put anyone in the position on a substitute basis. However, if a substitute is appointed for more than thirty days, the appointing authority must offer the appointment to the most senior person on the promotional eligibility list. Substitute appointments are made for the duration of the incumbent's absence.

Provisional appointments are temporary appointments which are made whenever an incumbent has permanently vacated his position through separation, promotion, or demotion, and there is no eligibility list from which a probational appointment may be made. Provisional appointments may be made of anyone the appointing authority deems qualified, although it is our advice that the person selected meet the qualification requirements for the class as adopted by the local civil service board. The period for each provisional appointment may not be for more than ninety days, although civil service law allows only one extension upon the approval of the local civil service board which is also not to exceed ninety days. The civil service board must call for an examination anytime a provisional appointment is made.

If an employee is on extended authorized leave of absence, may the appointing authority make a probational appointment to the position instead of a substitute appointment?

No. Probational appointments are appropriate only for filling permanent vacancies. A probational appointment to a position which is temporarily vacant due to a leave of absence has the effect of double-encumbering the position. The appropriate appointment is a *substitute* appointment, and the appointee acquires no permanent status therein. (See R.S. 33:2496 and 33:2556.)

In order to make a college list appointment to the civil service board, is the governing authority allowed to submit to the college head a list of persons he or she wishes to appoint to the board?

No. In the event of a vacancy or the expiration of the term of office of a college list member, civil service law provides that the governing authority must make the appointment from a list of two persons whose names

originate from the executive head of the institution of higher learning which is located in or most proximate to the jurisdiction requesting such a list. Submitting names to the college head which are only returned again for appointment may be considered to be a manipulation of civil service law. This action effectively gives the governing authority more than one nomination and appointment on the board. Alumni databases are excellent sources for candidates for nomination. (See R.S. 33:2476(C)(2) and 33:2536(C)(2).)

Is it true that once an employee becomes confirmed in the classified service, he can never be terminated?

It is not true. Civil service law provides that the tenure of persons who have been regularly and permanently inducted into positions of the classified service *shall be during good behavior*, and provides that the appointing authority may remove any employee from the service for as many as fifteen reasons, the first of which is the unwillingness or failure to perform the duties of his position in a satisfactory manner. (See R.S. 33:2500 and 33:2560.)

It is a common misconception that it is nearly impossible to terminate civil service employees due to the protections afforded them by law. While it is true that civil service law exists to protect public employees from removal or disciplinary action when the action taken was not in good faith for cause, it is not intended to harbor poor performance. It is the appointing authority's obligation, and the civil service board's responsibility, to assure that the standards of public service are maintained. Employees may be removed from service for cause, and we advise that there is no substitute for maintaining accurate and contemporaneous records of employee performance which may be of great benefit at the time that disciplinary action must be administered or upheld.

Furthermore, we recommend that any disciplinary action which may involve the termination of a regular and permanent classified employee should always include a pre-termination hearing in accordance with the decision of Loudermill v. Cleveland Board of Education (1983) 721 F.2d 550.

Can an employee who resigns from the classified fire or police service be re-employed?

Civil Service Law provides that a *regular* employee of the classified service may be re-employed if the re-employment is within four years of the date of resignation and provided no person on the reinstatement list (resulting from non-disciplinary demotions), promotional employment list, or re-employment list (lay-off situation) is willing to accept an appointment to the position in which the former employee wishes to be employed. In order to be re-employed, the former employee must obtain prior approval of the civil service board, and provide a favorable medical certificate to the appointing authority and the board following a recent medical exam. (See R.S. 33:2490(D) and 33:2550(D).)

Does an employee who has been re-employed have to serve another working test period, and what about his seniority?

If the employee is re-employed, he/she must complete a working test from at least six to not more than twelve months duration. An employee who resigns from the classified service forever loses all prior seniority, and seniority would begin again upon confirmation.

Where do I find the laws that are applicable to the fire and police service, but which are not civil service laws?

Revised Statutes that address fire and police departments may be found in Title 33, Chapter 4. Part I applies to both fire and police departments and includes R.S. 33:1941 through 33:1946. Part II applies only to fire departments and includes R.S. 33:1961 through 33:2185. Part III applies to police departments and includes R.S. 33:2191 through 33:2337. Visitors to the Legislature's website (<http://www.legis.state.la.us/>) may search to specific statutes or review the complete table of contents of all Louisiana laws.

Is the civil service board required to adopt rules, and what is required of the civil service board when changes to the classification plan and board rules are needed?

Louisiana Revised Statutes 33:2477(7) and (8) and 33:2537(7) and (8) require that the civil service board shall adopt rules necessary to carry out effectively the provisions of the Municipal Fire and Police Civil Service Law, and shall adopt and maintain a classification plan. R.S. 33:2478 and 33:2538 provide

that the board must hold a public hearing following a notification period of at least thirty days, and advise the Mayor, Commissioner of Public Safety, and other commissioners, the department Chiefs and each station which may be affected by the adoption of the proposed rule, as well as the State Examiner. Each notification must include the date, time, and place where the public hearing is to be held, and a copy of the proposed rule. Of course, rules adopted by the board have the force and effect of law.

Website Updates

<http://www.ose.state.la.us/>

We are very pleased that our website has become such a useful and informative resource. The State Examiner's Office embraces the progressive mission of the State of Louisiana to provide "world-class government services" to its citizens and others through the effective use of technology and the concept of e-Government.

Some of the services currently offered on the website include:

- The Municipal Fire and Police Civil Service Law
- Pre-examination booklets and study guides for promotional and competitive examinations.
- Entrance Firefighter and Police Officer testing information
- Fire Chief and Police Chief testing information
- Downloadable competitive and promotional applications
- Local jurisdiction information (contact names and telephone numbers)
- 2001 Regular Legislative Session information, and tracking of legislation pertinent to the classified service

We strive to anticipate and respond to the needs of those we serve through the use of the Internet and our presence on the world wide web. Categories which are

slated to be added in the near future include other Louisiana Revised Statutes that apply to the fire and police services, as well as Attorney General Opinions, Federal and State Court decisions, and Ethics Board Rulings and Opinions that are relevant to the classified service. We are also researching the possibilities for making the website an interactive experience. Of course, we always welcome any suggestion about what you would like to have included on the website.

**Municipal Fire and Police Civil Service
System
Statistics for the Year Ending June 30, 2001**

**Total Number
of Classified Employees..... 7,803**

**Total Number
of Individual Classifications..... 911**

Number jurisdictions..... 96

Number of municipalities..... 42

Number of fire protection districts..... 54

Number of police departments 41

Number of fire departments 94

**Number of
candidates tested 6,394**

**Number of
examinations given..... 475**

**Number of
personnel action forms
processed..... 6,725**

- FYI -

Telephone polls cannot be used to authorize action by the civil service board, as this may be considered a circumvention of the open meetings laws.

**In-Touch
With
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We are available to provide you with answers to your questions, Monday through Friday, from 8:00 AM to 4:30 PM. Most days you will find someone available here earlier or later than these hours. We are committed to providing you with the service you need, and have a policy of never transferring a business call to voice mail, unless you specifically request it. We



also have a policy of returning calls as soon as possible, but certainly within the business day except in very extenuating circumstances. You may call our 24-hour information line for information about upcoming Firefighter and Police Officer tests, or to leave a message for our staff after hours. Information on tests is also available on our website.

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